



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hurd Logging Company

File: B-245260

Date: December 13, 1991

Melford Hurd for the protester.

Rhea Daniels Moore, Esq., Department of Agriculture, for the agency.

John Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that a bid on a timber sale should have been rejected because it did not contain required information concerning the bidder's affiliates is denied where the information did not relate to the bidder's performance obligation and therefore could be furnished at any time prior to award.

DECISION

Hurd Logging Company protests the acceptability of a bid submitted by Duke City Lumber Company under the Brazos Timber Sale, offered by the Coyote Ranger District, Santa Fe National Forest. Hurd alleges that Duke City's bid should have been rejected because it did not include a completed "Certification of Affiliation," and that the Forest Service improperly allowed Duke City to furnish the certification after bid opening.

We deny the protest.

The bid form supplied by the agency to interested firms, who responded to the advertisement of sale, included a "Certification of Affiliation," which required the bidder to certify that it had included with its bid a complete listing of all of its affiliates "who are primarily engaged in the logging of forest products." The bid form indicated that if this information was not supplied with the bid, it would be rejected.

The Forest Service received sealed bids from Duke City and Hurd by bid opening on August 6. Upon review of the bids, the Forest Service found that Duke City, which had submitted the high bid, had failed to complete the "Certification of Affiliation" portion of the bid form. The Forest Service

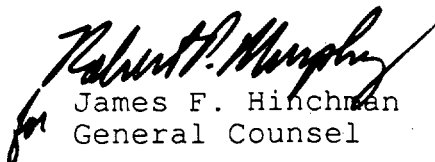
nevertheless accepted Duke City's bid and allowed Duke City to complete the certification prior to award, determining that the failure to submit the certification did not render the bid nonresponsive.

Generally, a bid on a timber sale with a material omission cannot be corrected after bid opening; such a bid is regarded as nonresponsive and must be rejected. D.M. Wilson Lumber, Inc., B-239136, Apr. 12, 1990, 90-1 CPD ¶ 386, recon. denied, D.M. Wilson Lumber, Inc.--Recon., B-239136.2, May 18, 1990, 90-1 CPD ¶ 489. However, not all information requested with a bid involves responsiveness; the information may relate to bidder responsibility, that is, the bidder's ability to perform, or may be required for the agency's own internal use. This type of information may be furnished after bid opening up to the time of award. D.M. Wilson Lumber, Inc., supra.

The information involved here, which concerns the bidder's affiliates, is not related to the bidder's performance obligation, but apparently is used either in connection with small business set-aside sales¹ or by the Forest Service to monitor affiliates so as to properly administer its sales programs. Since the information sought by the certification does not involve the bidder's obligation to perform, Duke City's failure to complete the certification by bid opening did not render its bid nonresponsive, and the completion of the certification and furnishing of the information after bid opening was not precluded. Id.

Nevertheless, the protester contends that the bid form's language, which indicated that bids that did not include this information would be rejected, made this requirement a matter of responsiveness. A requirement, such as the one here, essentially concerning the submission of information unrelated to the material terms and conditions of the solicitation and, thus, unrelated to the bidder's performance obligation, cannot be converted into a matter of responsiveness merely by solicitation terms requiring the furnishing of the information with the bid. EDT Constr., Inc., and Nw. Paving & Constr. Co., Inc., a joint venture, B-240343, Nov. 7, 1990, 90-2 CPD ¶ 374.

The protest is denied.


for James F. Hinchman
General Counsel

¹This sale is not a set-aside.